

07/15/2020

IN THE CIRCUIT COURT FOR FREDERICK COUNTY, MARYLAND

CM

STATE OF MARYLAND	:	
	:	
vs.	:	Case No.C-10-CR-20-000338
	:	
GARY E. DAVIS	:	
	:	
Defendant	:	

MOTION TO SUPPRESS EVIDENCE

COMES NOW the Defendant, GARY E. DAVIS, by and through his attorney, JAMES N. PAPIRMEISTER, ESQ., of the Law Offices of James N. Papirmeister, P.C., and pursuant to Maryland Rule 4-252G(2), respectfully requests this Honorable Court to suppress the following evidence on the grounds stated below:

A. **Extra-judicial and in-court identification evidence and testimony.**

1. Resulting from a pre-trial confrontation at which Defendant was not represented by counsel in violation of his right to counsel as guaranteed by the Sixth Amendment to the U.S. Constitution and by Article 21 of the Maryland Declaration of Rights.

2. Resulting from a pre-trial confrontation which was so unnecessarily suggestive and conducive to irreparable mistaken identification that Defendant was denied due process of law guaranteed to him by the Fifth and Fourteenth Amendments to the U.S. Constitution.

3. Resulting from any identification made by any witness shown a picture of the Defendant; the Defendant contends that the photographs of Defendant were shown in an unduly

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suggestive and otherwise illegal fashion and that the aforementioned photographic spread would unduly taint any in-court identification.

4. Resulting from observations by the witness at the scene of the alleged crime which occurred so long ago that to permit that particular witness to attempt an in-court identification of Defendant would be to deny him due process of law guaranteed by the Fifth Amendment to the U.S. Constitution and by Article 27 of the Maryland Declaration of Rights.

5. Resulting from an illegal arrest or search and seizure conducted in violation of the common law of Maryland, the Fourth and Fourteenth Amendments to the U.S. Constitution and Article 26 of the Maryland Declaration of Rights.

6. Resulting from the failure by the State or the Court to properly sequester identification witnesses in violation of Maryland Rule 4-321, the common law of Maryland, the due process of law guaranteed by the Fifth and Fourteenth Amendments to the U.S. Constitution and by Article 22 of the Maryland Declaration of Rights.

7. Resulting from witnesses whose identities were not disclosed to Defendant as required by Maryland Rule 4-263.

B. All other Evidence and Testimony.

1. Resulting from an illegal arrest or search and seizure conducted in violation of the common law of Maryland, the

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Fourth and Fourteenth Amendments to the U.S. Constitution, and Article 26 of the Maryland Declaration of Rights.

C. **Defendant's Statements.**

1. That the statement resulted from an illegal arrest and search and seizure conducted in violation of the common law of Maryland, the Fourth and Fourteenth Amendments to the U.S. Constitution, and Article 26 of the Maryland Declaration of Rights.

2. That the statement was obtained in violation of (a) the common law of Maryland; (b) due process of law guaranteed by the Fifth and Fourteenth Amendments to the U.S. Constitution and by Article 22 of the Maryland Declaration of Rights; (c) Defendant's right against self-incrimination guaranteed by the Fifth and Fourteenth Amendments to the U.S. Constitution and Article 22 of the Maryland Declaration of Rights; and (d) Defendant's right to counsel guaranteed by the Sixth and Fourteenth Amendments to the U.S. Constitution and Article 21 of the Maryland Declaration of Rights; and Maryland Rule 4-212.

-S-

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POINTS AND AUTHORITIES

1. Simmons v. U.S., 390 U.S. 377
2. Neil v. Biggers, 409 U.S. 188
3. Manson v. Bralathwaite, 425 U.S. 957
4. Moore v. Illinois, 98 S.Ct. 458
5. Smith and Samuels v. State, 6 Md. App. 59
6. Miranda v. Arizona, 384 U.S. 436
7. GARY E. DAVIS v. State, 282 Md. App. 314
8. Ryon v. State, 29 Md. App. 623
9. Keller v. State, 2 Md. App. 623

All other points and authorities to be presented at hearing.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15TH day of July, 2020, I transmitted a copy of the foregoing Motion to Suppress Evidence, via MDEC to the Office of the State's Attorney for Frederick County in Frederick, Maryland.

-S-

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